United Nations A/63/430/Add.1

General Assembly

Distr.: General
4 December 2008

Original: Arabic

Sixty-third session
Agenda item 64 (a)

Promotion and protection of human rights: implementation of human rights instruments

Report of the Third Committee*

Rapporteur: Mr. Khalid **Alwafi** (Saudi Arabia)

I. Introduction

1. At its 2nd plenary meeting, on 19 September 2008, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its sixty-third session, under the item entitled "Promotion and protection of human rights", the sub-item entitled "Implementation of human rights instruments" and to allocate it to the Third Committee.

2. The Third Committee considered the sub-item at its 18th, 19th, 23rd, 29th, 38th, 40th and 43rd meetings, on 21, 23 and 28 October and on 6, 18 and 20 November 2008. The Committee held a general discussion on the sub-item jointly with sub-item 64 (d) at its 18th and 19th meetings, and took action on sub-item 64 (a) at its 29th, 38th, 40th and 43rd meetings. An account of the Committee's consideration is contained in the relevant summary records (A/C.3/63/SR.18, 19, 23, 29, 38, 40 and 43).

3. For the documents before the Committee under this sub-item, see document A/63/430.

4. At the 18th meeting, on 21 October, the Director of the New York Office of the United Nations High Commissioner for Human Rights made an introductory statement (see A/C.3/63/SR.18).

5. At the same meeting, the representatives of Algeria and the Russian Federation posed questions and made comments to the Director of the New York Office of the High Commissioner (see A/C.3/63/SR.18).

* The report of the Committee on this item is being issued in six parts, under the symbol A/63/430 and Add.1-5.

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6. At the 23rd meeting, on 23 October, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment made a presentation and engaged in a dialogue with the representatives of France (on behalf of the States Members of the United Nations that are members of the European Union), the United States of America, Uruguay, Thailand, Switzerland, Denmark, Norway, Nigeria, Singapore and Mongolia (see A/C.3/63/SR.23).

II. Consideration of proposals

A. Draft resolution A/C.3/63/L.18 and Rev.1

7. At the 29th meeting, on 28 October, the representative of Denmark, on behalf of Argentina, Austria, Azerbaijan, Belgium, Benin, Brazil, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, the Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Germany, Ghana, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Mexico, Mongolia, Montenegro, the Netherlands, New Zealand, Norway, Panama, Paraguay, Peru, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, the United States of America and Venezuela (Bolivarian Republic of), introduced a draft resolution entitled "Torture and other cruel, inhuman or degrading treatment or punishment" (A/C.3/63/L.18). Subsequently, the Republic of Moldova and Timor-Leste joined in sponsoring the draft resolution, which read:

"*The General Assembly*,

"*Reaffirming* that no one shall be subjected to torture or to other cruel, inhuman or degrading treatment or punishment,

"*Recalling* that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right that must be protected under all circumstances, including in times of international or internal armed conflict or disturbance, and that the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in relevant international instruments,

"*Recalling also* that the prohibition of torture is a peremptory norm of international law and that international, regional and domestic courts have held the prohibition of cruel, inhuman or degrading treatment or punishment to be customary international law,

"*Recalling further* the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, without prejudice to any international instrument or national legislation which contains or may contain provisions of wider application,

"*Emphasizing* the importance of properly interpreting and implementing the obligations of States with respect to torture and other cruel, inhuman or degrading treatment or punishment, and of abiding strictly by the definition of torture contained in article 1 of the Convention,

"*Noting* that under the Geneva Conventions of 1949 torture and inhuman treatment are a grave breach and that under the statute of the International

Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, the statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 and the Rome Statute of the International Criminal Court acts of torture can constitute crimes against humanity and, when committed in a situation of armed conflict, constitute war crimes,

"*Acknowledging* the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance in its resolution 61/177 of 20 December 2006, and recognizing that its entry into force as soon as possible and its implementation will make a significant contribution to the prevention of torture, including through prohibiting places of secret detention,

"*Commending* the persistent efforts of civil society organizations, including non-governmental organizations, national human rights institutions and the considerable network of centres for the rehabilitation of victims of torture, to combat torture and to alleviate the suffering of victims of torture,

"*Welcoming* the entry into force of the Convention on the Rights of Persons with Disabilities, which reaffirms that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

"1. *Condemns* all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

"2. *Emphasizes* that States must take persistent, determined and effective measures to prevent and combat torture and other cruel, inhuman or degrading treatment or punishment, and stresses that all acts of torture must be made offences under domestic criminal law;

"3. *Calls upon* States parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to fulfil their obligation to designate or establish truly independent and effective national preventive mechanisms for the prevention of torture, encourages all other States which have not yet done so to establish similar mechanisms, and welcomes the establishment of all such national preventive mechanisms;

"4. *Emphasizes* the importance of States ensuring proper follow-up to the recommendations and conclusions of the relevant treaty bodies and mechanisms, including the Committee against Torture, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment;

"5. *Condemns* any action or attempt by States or public officials to legalize, authorize or acquiesce in torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions;

"6. *Stresses* that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent domestic authority, and that those who encourage, order, tolerate or perpetrate such acts must be held responsible, brought to justice and punished commensurate with the severity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed;

"7. *Takes note* in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to prevent and combat torture and of the updated set of principles for the protection of human rights through action to combat impunity;

"8. *Calls upon* States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to fulfil their obligation to submit for prosecution or extradite those alleged to have committed acts of torture, and encourages other States to do likewise;

"9. *Calls upon* all States to implement effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment, particularly in places of detention and other places where persons are deprived of their liberty, including education and training of personnel who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;

"10. *Also calls upon* all States to adopt a gender-sensitive approach in the fight against torture and cruel, inhuman or degrading treatment or punishment, paying special attention to violence against women and girls;

"11. *Calls upon* States to ensure that the rights of persons with disabilities, bearing in mind the Convention on the Rights of Persons With Disabilities, are fully integrated into torture prevention and protection, and welcomes the efforts of the Special Rapporteur in this regard;

"12. *Encourages* all States to ensure that persons convicted of torture or other cruel, inhuman or degrading treatment or punishment have no subsequent involvement in the custody, interrogation or treatment of any person under arrest, detention, imprisonment or other deprivation of liberty;

"13. *Emphasizes* that acts of torture in armed conflict are serious violations of international humanitarian law and in this regard constitute war crimes, that acts of torture can constitute crimes against humanity and that the perpetrators of all acts of torture must be prosecuted and punished;

"14. *Strongly urges* States to ensure that no statement that is established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;

"15. *Stresses* that States must not punish personnel for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

"16. *Urges* States not to expel, return ('refouler'), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement;

"17. *Stresses* that national legal systems must ensure that victims of torture and other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social and medical rehabilitation, urges States to take effective measures to this end, and in this regard encourages the development of rehabilitation centres;

"18. *Recalls* its resolution 43/173 of 9 December 1988 on the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and in this context stresses that ensuring that any individual arrested or detained is promptly brought before a judge or other independent judicial officer in person and permitting prompt and regular medical care and legal counsel as well as visits by family members and independent monitoring mechanisms are effective measures for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

"19. *Reminds* all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person;

"20. *Notes* the Istanbul Statement on the Use and Effects of Solitary Confinement, and encourages States to reflect upon this statement as a useful tool in efforts to promote and respect the rights of detainees;

"21. *Calls upon* all States to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export and use of equipment that is specifically designed to inflict torture or other cruel, inhuman or degrading treatment or punishment;

"22. *Urges* all States that have not yet done so to become parties to the Convention as a matter of priority and calls upon States parties to give serious consideration to signing and ratifying the Optional Protocol to the Convention;

"23. *Invites* all States parties to the Convention that have not yet done so to make the declarations provided for in articles 21 and 22 of the Convention concerning inter-State and individual communications, to consider the possibility of withdrawing their reservations to article 20 of the Convention and to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 of the Convention with a view to enhancing the effectiveness of the Committee against Torture as soon as possible;

"24. *Urges* States parties to comply strictly with their obligations under the Convention, including, in view of the high number of reports not submitted in time, their obligation to submit reports in accordance with article 19 of the Convention, and invites States parties to incorporate a gender perspective and information concerning children and juveniles and persons with disabilities when submitting reports to the Committee;

"25. *Welcomes* the work of the Committee and its report submitted in accordance with article 24 of the Convention, recommends that the Committee continue to include information on the follow-up by States to its recommendations, and supports the Committee in its intention to further improve the effectiveness of its working methods;

"26. *Invites* the Chairpersons of the Committee and the Subcommittee to address the General Assembly at future sessions under the agenda item 'Promotion and protection of human rights: implementation of human rights instruments';

"27. *Calls upon* the United Nations High Commissioner for Human Rights, in conformity with her mandate established by the General Assembly in its resolution 48/141 of 20 December 1993, to continue to provide, at the request of States, advisory services for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, including for the preparation of national reports to the Committee and for the establishment and operation of national preventive mechanisms, as well as technical assistance for the development, production and distribution of teaching material for this purpose;

"28. *Notes with appreciation* the interim report of the Special Rapporteur, and encourages the Special Rapporteur to continue to include in his recommendations proposals on the prevention and investigation of torture and other cruel, inhuman or degrading treatment or punishment, including its gender-based manifestations;

"29. *Requests* the Special Rapporteur to continue to consider including in his report information on the follow-up by States to his recommendations, visits and communications, including progress made and problems encountered, and on other official contacts;

"30. *Calls upon* all States to cooperate with and assist the Special Rapporteur in the performance of his task, to supply all necessary information requested by the Special Rapporteur, to fully and expeditiously respond to and follow up his urgent appeals, to give serious consideration to responding favourably to requests by the Special Rapporteur to visit their countries and to enter into a constructive dialogue with the Special Rapporteur on requested visits to their countries as well as with respect to the follow-up to his recommendations;

"31. *Stresses* the need for the continued regular exchange of views among the Committee, the Subcommittee, the Special Rapporteur and other relevant United Nations mechanisms and bodies, as well as for the pursuance of cooperation with relevant United Nations programmes, notably the United Nations Crime Prevention and Criminal Justice Programme, with regional organizations and mechanisms, as appropriate, and civil society organizations,

including non-governmental organizations, with a view to enhancing further their effectiveness and cooperation on issues relating to the prevention and eradication of torture, inter alia, by improving their coordination;

"32. *Recognizes* the global need for international assistance to victims of torture, stresses the importance of the work of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, appeals to all States and organizations to contribute annually to the Fund, preferably with a substantial increase in the level of contributions, and encourages contributions to the Special Fund established by the Optional Protocol to help finance the implementation of the recommendations made by the Subcommittee as well as education programmes of the national preventive mechanisms;

"33. *Requests* the Secretary-General to continue to transmit to all States the appeals of the General Assembly for contributions to the Funds and to include the Funds on an annual basis among the programmes for which funds are pledged at the United Nations Pledging Conference for Development Activities;

"34. *Also requests* the Secretary-General to submit to the Human Rights Council and to the General Assembly at its sixty-fourth session a report on the operations of the Funds;

"35. *Further requests* the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of adequate staff and facilities for the bodies and mechanisms involved in preventing and combating torture and assisting victims of torture or other cruel, inhuman or degrading treatment or punishment commensurate with the strong support expressed by Member States for preventing and combating torture and assisting victims of torture;

"36. *Calls upon* all States, the Office of the United Nations High Commissioner for Human Rights and other United Nations bodies and agencies, as well as relevant intergovernmental and civil society organizations, including non-governmental organizations, to commemorate, on 26 June, the United Nations International Day in Support of Victims of Torture;

"37. *Decides* to consider at its sixty-fourth session the reports of the Secretary-General, including the report on the United Nations Voluntary Fund for Victims of Torture and the Special Fund established by the Optional Protocol, the report of the Committee against Torture and the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment."

8. At its 40th meeting, on 18 November, the Committee had before it a revised draft resolution submitted by Albania, Andorra, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Canada, Chile, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, the Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Finland, France, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Mongolia, Montenegro, the Netherlands, New Zealand, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Portugal, the Republic of Moldova, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia,

Timor-Leste, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uruguay and Venezuela (Bolivarian Republic of), entitled "Torture and other cruel, inhuman or degrading treatment or punishment (A/C.3/63/L.18/Rev.1). Subsequently, Bangladesh, Belarus, Burundi, Cape Verde, the Dominican Republic, Georgia, Israel, Kyrgyzstan, Madagascar, Mali, Micronesia (Federated States of), Nicaragua, the Republic of Korea, Rwanda, Senegal, Togo, Turkey and Ukraine joined in sponsoring the revised draft resolution.

9. At the same meeting, the Committee was advised that the draft resolution had no programme budget implications.

10. Also at its 40th meeting, the Committee adopted draft resolution A/C.3/63/L.18/Rev.1 without a vote (see para. 17, draft resolution I).

11. After the adoption of the draft resolution, statements were made by the representatives of Egypt, Israel and the United Kingdom of Great Britain and Northern Ireland (see A/C.3/63/SR.40).

B. Draft resolution A/C.3/63/L.45*

12. At the 38th meeting, on 6 November, the representative of Cuba, on behalf of Belarus, Benin, Burundi, China, Côte d'Ivoire, Cuba, Egypt, Ethiopia, Fiji, India, Iran (Islamic Republic of), the Lao People's Democratic Republic, Lesotho, the Libyan Arab Jamahiriya, Madagascar, Myanmar, Namibia, Nicaragua, the Russian Federation, South Africa, the Sudan, the Syrian Arab Republic, Venezuela (Bolivarian Republic of), Viet Nam and Zimbabwe, introduced a draft resolution entitled "Equitable geographical distribution in the membership of the human rights treaty bodies" (A/C.3/63/L.45). Subsequently, Algeria, Angola, Bangladesh, Belize, Bolivia, Chad, the Dominican Republic, El Salvador, Ghana, Honduras, Indonesia, Kenya, Kuwait, Lebanon, Liberia, Malawi, Mali, Mauritania, Nigeria, Pakistan, Qatar, Rwanda, Saudi Arabia, Sierra Leone, the Solomon Islands, Sri Lanka, Togo and Zambia joined in sponsoring the draft resolution.

13. At its 43rd meeting, on 20 November, the Committee was advised that the draft resolution had no programme budget implications.

14. At the same meeting, a statement was made by the representative of the Russian Federation (see A/C.3/63/SR.43).

15. At its 43rd meeting, the Committee adopted draft resolution A/C.3/63/L.45 by a recorded vote of 122 to 53, with 4 abstentions (see para. 17, draft resolution II). The voting was as follows:

In favour:

Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bhutan, Bolivia, Botswana, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Republic, Chad, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Ghana, Grenada, Guatemala,

* The draft resolution was submitted also under agenda item 64 (b).

Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Russian Federation, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Senegal, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkmenistan, Tuvalu, Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe.

Against:

Albania, Andorra, Armenia, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Chile, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining:

Brazil, Cape Verde, Timor-Leste, Ukraine.

16. Before the vote, statements were made by the representatives of Cuba, the United States of America and France (on behalf of the States Members of the United Nations that are members of the European Union and associated countries) (see A/C.3/63/SR.43).

III. Recommendation of the Third Committee

17. The Third Committee recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I
Torture and other cruel, inhuman or degrading treatment or punishment

The General Assembly,

Reaffirming that no one shall be subjected to torture or to other cruel, inhuman or degrading treatment or punishment,

Recalling that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right that must be protected under all circumstances, including in times of international or internal armed conflict or disturbance, and that the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in relevant international instruments,

Recalling also that the prohibition of torture is a peremptory norm of international law and that international, regional and domestic courts have held the prohibition of cruel, inhuman or degrading treatment or punishment to be customary international law,

Recalling further the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[1] without prejudice to any international instrument or national legislation which contains or may contain provisions of wider application,

Emphasizing the importance of properly interpreting and implementing the obligations of States with respect to torture and other cruel, inhuman or degrading treatment or punishment, and of abiding strictly by the definition of torture contained in article 1 of the Convention,

Noting that under the Geneva Conventions of 1949[2] torture and inhuman treatment are a grave breach and that under the statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, the statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 and the Rome Statute of the International Criminal Court[3] acts of torture can constitute crimes against humanity and, when committed in a situation of armed conflict, constitute war crimes,

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[1] United Nations, *Treaty Series*, vol. 1465, No. 24841.

[2] Ibid., vol. 75, Nos. 970-973.

[3] Ibid., vol. 2187, No. 38544.

Acknowledging the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance in its resolution 61/177 of 20 December 2006, and recognizing that its entry into force as soon as possible and its implementation will make a significant contribution to the prevention of torture, including through prohibiting places of secret detention,

Commending the persistent efforts of civil society organizations, including non-governmental organizations, national human rights institutions and the considerable network of centres for the rehabilitation of victims of torture, to combat torture and to alleviate the suffering of victims of torture,

Welcoming the entry into force of the Convention on the Rights of Persons with Disabilities,[4] which reaffirms that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

1. *Condemns* all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

2. *Emphasizes* that States must take persistent, determined and effective measures to prevent and combat torture and other cruel, inhuman or degrading treatment or punishment, and stresses that all acts of torture must be made offences under domestic criminal law;

3. *Welcomes* the establishment of national preventive mechanisms to prevent torture and encourages all States that have not yet done so to establish such mechanisms, and calls upon States parties to the Optional Protocol[5] to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[1] to fulfil their obligation to designate or establish truly independent and effective national preventive mechanisms for the prevention of torture;

4. *Emphasizes* the importance of States' ensuring proper follow-up to the recommendations and conclusions of the relevant treaty bodies and mechanisms, including the Committee against Torture, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment;

5. *Condemns* any action or attempt by States or public officials to legalize, authorize or acquiesce in torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions;

6. *Stresses* that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent domestic authority, and that those who encourage, order, tolerate or perpetrate such acts must be held responsible, brought to justice and punished in a manner commensurate with the severity of the offence, including the officials in

[4] Resolution 61/106, annex I.

[5] Resolution 57/199, annex.

charge of the place of detention where the prohibited act is found to have been committed;

7. *Takes note* in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles)[6] as a useful tool in efforts to prevent and combat torture and of the updated set of principles for the protection of human rights through action to combat impunity;[7]

8. *Calls upon* all States to implement effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment, particularly in places of detention and other places where persons are deprived of their liberty, including education and training of personnel who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;

9. *Also calls upon* all States to adopt a gender-sensitive approach in the fight against torture and cruel, inhuman or degrading treatment or punishment, paying special attention to violence against women and girls;

10. *Calls upon* States to ensure that the rights of persons with disabilities, bearing in mind the Convention on the Rights of Persons with Disabilities,[4] are fully integrated into torture prevention and protection, and welcomes the efforts of the Special Rapporteur in this regard;

11. *Encourages* all States to ensure that persons convicted of torture or other cruel, inhuman or degrading treatment or punishment have no subsequent involvement in the custody, interrogation or treatment of any person under arrest, detention, imprisonment or other deprivation of liberty;

12. *Emphasizes* that acts of torture in armed conflict are serious violations of international humanitarian law and in this regard constitute war crimes, that acts of torture can constitute crimes against humanity and that the perpetrators of all acts of torture must be prosecuted and punished;

13. *Strongly urges* States to ensure that no statement that is established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;

14. *Stresses* that States must not punish personnel for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

15. *Urges* States not to expel, return ("refouler"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement;

16. *Recalls* that, for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations

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[6] Resolution 55/89, annex.

[7] See E/CN.4/2005/102/Add.1.

including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights;

17. *Calls upon* States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to fulfil their obligation to submit for prosecution or extradite those alleged to have committed acts of torture, and encourages other States to do likewise, bearing in mind the need to fight impunity;

18. *Stresses* that national legal systems must ensure that victims of torture and other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social and medical rehabilitation, urges States to take effective measures to this end, and in this regard encourages the development of rehabilitation centres;

19. *Recalls* its resolution 43/173 of 9 December 1988 on the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and in this context stresses that ensuring that any individual arrested or detained is promptly brought before a judge or other independent judicial officer in person and permitting prompt and regular medical care and legal counsel as well as visits by family members and independent monitoring mechanisms are effective measures for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

20. *Reminds* all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person;

21. *Notes* the concerns expressed in the interim report of the Special Rapporteur on solitary confinement,[8] and highlights the importance of reflecting on this in efforts to promote respect for and protection of the rights of detainees;

22. *Calls upon* all States to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export and use of equipment that is specifically designed to inflict torture or other cruel, inhuman or degrading treatment or punishment;

23. *Urges* all States that have not yet done so to become parties to the Convention as a matter of priority and calls upon States parties to give early consideration to signing and ratifying the Optional Protocol to the Convention;

24. *Invites* all States parties to the Convention that have not yet done so to make the declarations provided for in articles 21 and 22 of the Convention concerning inter-State and individual communications, to consider the possibility of withdrawing their reservations to article 20 of the Convention and to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 of the Convention with a view to enhancing the effectiveness of the Committee against Torture as soon as possible;

25. *Urges* States parties to comply strictly with their obligations under the Convention, including, in view of the high number of reports not submitted in time,

[8] See A/63/175, annex.

their obligation to submit reports in accordance with article 19 of the Convention, and invites States parties to incorporate a gender perspective and information concerning children and juveniles and persons with disabilities when submitting reports to the Committee;

26. *Welcomes* the work of the Committee and its report submitted in accordance with article 24 of the Convention,[9] recommends that the Committee continue to include information on the follow-up by States to its recommendations, and supports the Committee in its intention to further improve the effectiveness of its working methods;

27. *Invites* the Chairpersons of the Committee and the Subcommittee to present oral reports on the work of the Committees and to engage in an interactive dialogue with the General Assembly at its sixty-fourth session under the agenda item entitled "Promotion and protection of human rights: implementation of human rights instruments";

28. *Calls upon* the United Nations High Commissioner for Human Rights, in conformity with her mandate established by the General Assembly in its resolution 48/141 of 20 December 1993, to continue to provide, at the request of States, advisory services for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, including for the preparation of national reports to the Committee and for the establishment and operation of national preventive mechanisms, as well as technical assistance for the development, production and distribution of teaching material for this purpose;

29. *Notes with appreciation* the interim report of the Special Rapporteur,[10] and encourages the Special Rapporteur to continue to include in his recommendations proposals on the prevention and investigation of torture and other cruel, inhuman or degrading treatment or punishment, including its gender-based manifestations;

30. *Requests* the Special Rapporteur to continue to consider including in his report information on the follow-up by States to his recommendations, visits and communications, including progress made and problems encountered, and on other official contacts;

31. *Calls upon* all States to cooperate with and assist the Special Rapporteur in the performance of his task, to supply all necessary information requested by the Special Rapporteur, to fully and expeditiously respond to and follow up his urgent appeals, to give serious consideration to responding favourably to requests by the Special Rapporteur to visit their countries and to enter into a constructive dialogue with the Special Rapporteur on requested visits to their countries as well as with respect to the follow-up to his recommendations;

32. *Stresses* the need for the continued regular exchange of views among the Committee, the Subcommittee, the Special Rapporteur and other relevant United Nations mechanisms and bodies, as well as for the pursuance of cooperation with relevant United Nations programmes, notably the United Nations Crime Prevention and Criminal Justice Programme, with regional organizations and mechanisms, as appropriate, and civil society organizations, including non-governmental

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[9] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 44* (A/63/44).

[10] See A/63/175.

organizations, with a view to enhancing further their effectiveness and cooperation on issues relating to the prevention and eradication of torture, inter alia, by improving their coordination;

33. *Recognizes* the global need for international assistance to victims of torture, stresses the importance of the work of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, appeals to all States and organizations to contribute annually to the Fund, preferably with a substantial increase in the level of contributions, and encourages contributions to the Special Fund established by the Optional Protocol to help finance the implementation of the recommendations made by the Subcommittee as well as education programmes of the national preventive mechanisms;

34. *Requests* the Secretary-General to continue to transmit to all States the appeals of the General Assembly for contributions to the Funds and to include the Funds on an annual basis among the programmes for which funds are pledged at the United Nations Pledging Conference for Development Activities;

35. *Also requests* the Secretary-General to submit to the Human Rights Council and to the General Assembly at its sixty-fourth session a report on the operations of the Funds;

36. *Further requests* the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of adequate staff and facilities for the bodies and mechanisms involved in preventing and combating torture and assisting victims of torture or other cruel, inhuman or degrading treatment or punishment commensurate with the strong support expressed by Member States for preventing and combating torture and assisting victims of torture;

37. *Calls upon* all States, the Office of the United Nations High Commissioner for Human Rights and other United Nations bodies and agencies, as well as relevant intergovernmental and civil society organizations, including non-governmental organizations, to commemorate, on 26 June, the United Nations International Day in Support of Victims of Torture;

38. *Decides* to consider at its sixty-fourth session the reports of the Secretary-General, including the report on the United Nations Voluntary Fund for Victims of Torture and the Special Fund established by the Optional Protocol, the report of the Committee against Torture and the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Draft resolution II
Equitable geographical distribution in the membership of the human rights treaty bodies

The General Assembly,

Recalling its previous resolutions on this question,

Reaffirming the importance of the goal of universal ratification of the United Nations human rights instruments,

Welcoming the significant increase in the number of ratifications of United Nations human rights instruments, which has especially contributed to their universality,

Reiterating the importance of the effective functioning of treaty bodies established pursuant to United Nations human rights instruments for the full and effective implementation of those instruments,

Recalling that, with regard to the election of the members of the human rights treaty bodies, the General Assembly as well as the Commission on Human Rights recognized the importance of giving consideration in their membership to equitable geographical distribution, gender balance and representation of the principal legal systems and of bearing in mind that the members shall be elected and shall serve in their personal capacity, and shall be of high moral character, acknowledged impartiality and recognized competence in the field of human rights,

Reaffirming the significance of national and regional particularities and various historical, cultural and religious backgrounds, as well as of different political, economic and legal systems,

Recognizing that the United Nations pursues multilingualism as a means of promoting, protecting and preserving diversity of languages and cultures globally and that genuine multilingualism promotes unity in diversity and international understanding,

Recalling that the General Assembly as well as the Commission on Human Rights encouraged States parties to United Nations human rights treaties, individually and through meetings of States parties, to consider how to give better effect, inter alia, to the principle of equitable geographical distribution in the membership of treaty bodies,

Expressing concern at the regional imbalance in the current composition of the membership of some of the human rights treaty bodies,

Noting in particular that the status quo tends to be particularly detrimental to the election of experts from some regional groups,

Convinced that the goal of equitable geographical distribution in the membership of human rights treaty bodies is perfectly compatible and can be fully realized and achieved in harmony with the need to ensure gender balance and the representation of the principal legal systems in those bodies and the high moral character, acknowledged impartiality and recognized competence in the field of human rights of their members,

1. *Encourages* the States parties to the United Nations human rights instruments to consider and adopt concrete actions, inter alia, the possible establishment of quota distribution systems by geographical region for the election of the members of the treaty bodies, thereby ensuring the paramount objective of equitable geographical distribution in the membership of those human rights bodies;

2. *Calls upon* the States parties to the United Nations human rights instruments to include a debate on ways and means to ensure equitable geographical distribution in the membership of the human rights treaty bodies, based on previous recommendations of the Commission on Human Rights and the Economic and Social Council and the provisions of the present resolution;

3. *Recommends*, when considering the possible establishment of a quota by region for the election of the membership of each treaty body, the introduction of flexible procedures that encompass the following criteria:

(a) Each of the five regional groups established by the General Assembly must be assigned a quota of the membership of each treaty body in equivalent proportion to the number of States parties to the instrument that it represents;

(b) There must be provision for periodic revisions that reflect the relative changes in the geographical distribution of States parties;

(c) Automatic periodic revisions should be envisaged in order to avoid amending the text of the instrument when the quotas are revised;

4. *Stresses* that the process needed to achieve the goal of equitable geographical distribution in the membership of human rights treaty bodies can contribute to raising awareness of the importance of gender balance, the representation of the principal legal systems and the principle that the members of the treaty bodies shall be elected and shall serve in their personal capacity, and shall be of high moral character, acknowledged impartiality and recognized competence in the field of human rights;

5. *Requests* the chairpersons of the human rights treaty bodies to consider at their next meeting the content of the present resolution and to submit, through the United Nations High Commissioner for Human Rights, specific recommendations for the achievement of the goal of equitable geographical distribution in the membership of the human rights treaty bodies;

6. *Requests* the United Nations High Commissioner for Human Rights to submit concrete recommendations on the implementation of the present resolution to the General Assembly at its sixty-fourth session;

7. *Decides* to continue its consideration of this question at its sixty-fourth session under the item entitled "Promotion and protection of human rights".